

**LEGAL PRESENCE PANEL  
SUMMARY NOTES FOR MEETING OF 2 JULY 2003**

**NEXT MEETING**

To be announced. If you have any questions, please contact Vivian Cheatham at (804) 367-6606 or via e-mail at [dmvrc@dmv.state.va.us](mailto:dmvrc@dmv.state.va.us).

**TASKS & INFORMATION NEEDED FOR THE NEXT MEETING**

- ▶ Development of materials documenting remaining steps needed to complete project — Staff.
- ▶ Materials to be provided to panel members prior to the meeting.

**SUMMARY OF RECOMMENDATIONS MADE**

**On New Action/Issue Statements:**

- ▶ POL-9: Grace period for expired documents — Approved with changes.
- ▶ POL-10: Document replacement during period of legal presence in the U.S. — Changes made during meeting and re-submitted to panel during same meeting — Approved with additional changes.
- ▶ POL-12: Mail-in or fax of legal presence documents in limited circumstances — Changes made during meeting and re-submitted to panel during same meeting — Rejected.
- ▶ POL-14: Modifications to DL and ID card applications in implementing legal presence legislation — Approved with one abstention.
- ▶ POL-16: Applicability of new law to licenses suspended, revoked or cancelled prior to January 1, 2004 — Approved contingent on changes and revising into two separate documents.

**On Revised Action/Issue Statements From Last Meeting:**

- ▶ POL-1: Implementation of the SAVE program — Approved with additional changes.
- ▶ POL-2: Designated offices or windows for processing transactions requiring proof of legal presence — Approved.
- ▶ POL-7: Accepting notification from local, state and federal government agencies that a document holder is not lawfully in the U.S. — Approved with additional change.

**Revisions to 6/18 Meeting Minutes:** See attached (revisions on pages 3 and 5 of the minutes of 6/18/03 meeting).

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- ▶ **POL-9: Grace period for expired documents — Approved with changes.**

Initial discussion centered on when the testing requirements are waived currently and whether the legal presence legislation would allow such a waiver. DMV staff explained that under current law, the Commissioner may waive testing requirements at his discretion. The current one-year grace period is an administrative determination (the Va. Code does not specify a time period). The new legislation does not allow the Commissioner to waive the proof of legal presence requirements within the grace period. The recommendation is to still allow waiver of the tests

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upon application for renewal during the grace period, at the Commissioner's discretion, but require proof of legal presence when the license has expired — as mandated by the new legislation. This type of grace period is not unique to Virginia and other states allow an extended period from between 6 months to a year when an expired license can be renewed without re-testing. The testing waiver does not apply to drivers who have two or more moving violations on their records, or who hold a commercial driver's license with hazmat endorsement.

Further discussion centered on the fact that this recommendation would apply to all renewal applicants, and that it will be critical to ensure that the customer addresses contained in the DMV records are kept current. Panel members asked that this recommendation be revised to include a statement that

DMV is to ensure a notification process for those whose licenses are about to expire. It should include information about the requirement to prove legal presence in person at a DMV CSC. DMV is required by law to mail renewal applicants a renewal notice. The notice will be amended to advise customer of requirement to provide proof of legal presence if license expires.

Staff will revise the recommendation to address this issue. With this change, panel members unanimously approved the recommendation by voice vote.

► **POL-10: Document replacement during period of legal presence in the U.S. — Changes made during meeting and re-submitted to panel during same meeting — Approved with additional changes.**

Panel members questioned if there would ever be an occasion when a license holder could be required to surrender legal presence-related documents to the authorities, and consequently be unable to re-prove legal presence. The following discussion centered on how legal status is handled when subject to hearings or proceedings. There was also discussion of documentation held by asylum seekers and refugees. Concerns were raised about DMV serving as immigration officials when having to review immigration documents. Panel members then asked for a definition of suspended, revoked and cancelled licenses, and the requirement for obtaining the license after such action.

Staff explained that this subject would be covered in more depth when POL-16 was presented later in the meeting. DMV staff and Jeff Spencer of the Attorney General's Office then explained that, in general, suspensions are imposed for lesser violations (such as failure to pay court costs, failure to pay child support, etc.) and that the license will be reissued once the suspension requirements are met if the license is still valid and has not expired. Revocations are imposed for more serious violations (such as reckless driving, multiple driving under the influence convictions, and manslaughter, etc.). A revoked license cannot be reissued. The customer must meet the revocation order requirements and then go through the original licensing process again. Cancellations occur when a license should not have been issued (for instance, when parents request DMV to rescind a child's driver's license). A customer whose license was cancelled must go through the original licensing process again. Licenses are also reissued to customers who report that the original license has been lost or stolen.

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Members then discussed which legal presence documents are issued with an indeterminate date, or no date, such as those held by asylum seekers, refugees and students. It was stated that F

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and J status student documents specifically will carry an end date with the implementation of the post-September 11<sup>th</sup> -revised I-20 document. Asylum-seekers and refugees will still have documents with no end date. After discussion, the panel requested staff to re-work and revise the recommendation and bring it back later in the meeting. It should include statements that the DMV computer system must be able to maintain legal presence documentation information. This information will be checked when any customer requests a license reissue or reinstatement.

If the customer has already proved legal presence, as indicated by the record, no further proof would be required. If the customer has not previously proved legal presence, he or she would have to present the appropriate documents before the license could be reissued. Further, there should be no distinction between revoked, suspended or cancelled licenses in regard to proof of legal presence.

Staff returned a revised action/issue statement that struck the second paragraph within the Impact and Challenges section, and added an additional paragraph that stated that the list of acceptable documents for proof of legal presence by non-immigrants should require documents that bear specific end dates, if such are available. The Recommended Decision statement was amended to strike the recommendation and replace it with a statement as follows:

For any applicant who has been required, after January 1, 2004, to provide documentary evidence of legal presence, DMV will maintain records that show the applicant's status, the documents provided to prove legal presence and the expiration date, if any, of the applicant's authorized stay in the U.S. during the period of authorized stay, an applicant will not be required to present additional documentation evidencing legal presence, unless DMV has been notified that the applicant's presence in the U.S. may not be authorized.

Members again discussed the issue of indeterminate stays. Some members felt that such persons should have to always re-prove legal status. There was concern that schools would not inform DMV of any change in student status. After more discussion, the panel made the following changes to the revised action/issue statement:

For any applicant who has been required, after January 1, 2004, to provide documentary evidence of legal presence, DMV will maintain records that show ~~the applicant's status~~, the documents the applicant provided to prove legal presence and the expiration date, if any, of the applicant's authorized stay in the U.S. during the period of authorized stay, an applicant will not be required to present additional documentation evidencing legal presence, unless DMV has been notified that the applicant's presence in the U.S. may not be authorized.

Members also requested that staff include a paragraph within the Impact and Challenges section concerning the impact on nonimmigrants and the acceptability of their documents, to be written by Helen Konrad. With these changes, and pending review of the new language, the panel approved the issue/action statement and its recommendation.

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- ▶ **POL-12: Mail-in or fax of legal presence documents in limited circumstances — Changes made during meeting and re-submitted to panel during same meeting — Rejected.**

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Members first requested clarification of the current process to prove an address exception which would allow renewal of a license for an out-of-state applicant — were original documents currently required? Staff explained that DMV accepts original documents (with few exceptions) to show legitimate reasons for being unable to renew a driver's license. CSC representatives may fax a questionable document to specified personnel in the headquarters office for verification. They in turn may call the issuing authority to verify the document. In these cases, verification is made using the fax copy of the document. Limited exceptions are defined in statute (outside the state for reasons of military service, employment, study or family reasons). Staff expressed concerns that a process of verification for all photocopied/faxed legal presence documents would mean increased processing time and the need for additional staff to handle the workload. Concerns were also expressed about the possible impact on military personnel who might be unable to present such documents in person.

Members expressed concerns about the possibility of fraud if photocopies or faxes of documents to prove legal presence were accepted under current statutory provisions for out-of-state renewals. There was concern that this could result in a cottage industry providing falsified documents. Concerns were also expressed about receiving a timely response from immigration authorities, and about DMV personnel acting in the position of immigration officials. There were also concerns that persons could abuse the "family reasons" exception. Members discussed the possibility of developing a limited verification process (by which not all photocopied or faxed documents would be verified), and a process that would allow issuance of a temporary permit while verification was being made. Further concerns were expressed about the uniformity of the process — holding all customers to the same requirements.

After discussion, the panel requested staff to re-work and revise the recommendation and bring it back later in the meeting.

Staff returned a revised action/issue statement that included within the Impact and Challenges section a statement that DMV would establish a protocol and procedures for verifying faxed legal presence documents, and would ensure that they were fair, equitable and cost-effective. This statement was also repeated in the Recommended Decision section.

Members again questioned the issue of possible fraud, and raised the possibility of not allowing fax or photocopies of any legal presence documents. The issue of parity was raised — why allow some to have this exemption. Staff explained that the exemption is specified and required in the Va. Code and would require a change to disallow. After further discussion, the panel voted on the question of accepting the recommendation to allow fax or photocopies of legal presence documents (as amended), or requiring these documents to be presented in person. The panel voted to reject the recommendation with one abstention (Mr. Tejada).

- ▶ **POL-14: Modifications to DL and ID card applications in implementing legal presence legislation — Approved with one abstention.**

Members discussed the issue of whether DMV should modify its driver's license and identification card application to include boxes for the applicant to indicate legal presence status. The

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recommendation is to include a box within the "DMV Use Only" portion of the application where CSC personnel can indicate the types of documents presented. Additions to the application are complicated by limited space and the provisions of the National Voter Registration Act (Motor Voter).

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Concerns were raised that the ID card was not renewable and that the ID card needed to follow the same provisions as the driver's license for consistency. Staff explained that there is no provision in the Va. Code for renewal of an ID card, and therefore, all ID cards are an original issue. A revision to the Va. Code would be needed to allow ID card renewals.

Members then discussed whether detailed information should be included on the application, and expressed concerns that the application clearly spell out what information is required for proof of legal presence.

Members questioned whether a document explaining legal presence will be sent out with applications. Staff explained that original applications are picked up in person at a CSC, but that such a document could be mailed with the normal renewal application as part of the renewal process. Mr. Tejada requested that the minutes reflect his concerns that this information be reflected on the application, and that the application be approved by the U.S. Department of Justice. The chairman and staff explained that all DMV processes relating to license or ID card application, including the application forms, already must be pre-approved by Justice under the National Vote Registration Act. All current DMV processes and applications pertaining to driver's license and ID card applications have been precleared by Justice. Further, the expected changes to the application pertaining to the U.S. Patriot Act for commercial driver's licenses will also have to receive Justice approval.

Members then questioned whether renewal notices will include legal presence information in Spanish. Staff explained that DMV is aware of this issue and is working on a process for providing bilingual legal presence information as part of the renewal notice.

The panel agreed to the recommendation with one abstention (Mr. Tejada).

► **POL-16: Applicability of new law to licenses suspended, revoked or cancelled prior to January 1, 2004 — Approved contingent on changes and revising into two separate documents.**

The issue concerns whether proof of legal presence will apply to customers who come to a DMV office to reinstate or re-apply for a license that was revoked, suspended or cancelled before proof of legal presence was implemented. DMV recommends that the new laws apply and that all customers applying to have a license reissued or reinstated must provide proof of legal presence.

Staff explained that DMV will modify its orders of suspension, revocation and cancellation to include information on the requirements to prove legal presence, but there are concerns that persons whose license is currently under suspension or revocation will not have that information. Currently, orders of suspension, revocation and cancellation tell the customer all of the requirements needed to meet license reinstatement. This is the only routine communication of the reinstatement requirements. Since legal presence is not yet implemented, this information is not now included in these orders.

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Staff further explained that DMV is examining a modification to the orders, to include information on the need for proof of legal presence if the license is reinstated on or after January 1, 2004. DMV can also distribute this information to customers who mail in, or bring into an office, partial order compliance. Staff further recommends that if the customer has complied with every reinstatement requirement except legal presence, the customer's record be changed to reflect a status of "not licensed," rather than suspended or revoked. That would mean any such person found driving without a license would be charged so charged, which carries a lesser penalty than driving on a suspended or revoked license.

Panel members felt that this action/issue statement was trying to address separate issues — license status and how to handle reinstatements for orders of suspension or revocation issued prior to implementation of legal status. They also expressed strong concerns about the necessity to notify persons now who are currently under revocation/suspension about the need to prove legal status on or after January 1, 2004.

Members asked for clarification of how reinstatement requirements are normally provided to persons under suspension or revocation. Staff explained that the order notifying the person that his or her license is suspended or revoked also contains all of the requirements needed for reinstatement of the license. They expressed concerns of the hardships that could be imposed if such persons do not know in advance that proof of legal presence will be required. They also questioned how DMV will try to minimize the impact on persons. Other members indicated that DMV evening and Saturday office hours should help.

Members further questioned whether DMV had the authority to change the customer's license status to "not licensed" when the required proof of legal presence had not been met. Staff explained that the legislation was silent on this issue, and does not specify that persons stay suspended or revoked until the legal presence requirements are met. Rick Walton explained that it was a customer-friendly action that would mean a lesser charge for anyone caught driving in this situation.

Members then asked staff to revise this action/issue statement into two separate documents — one to address the issue of legal presence compliance applied retroactively to persons whose license is suspended or revoked before January 1, 2004, and one to address the issue of license status. Members further requested that the first paragraph within the Recommended Decision section be amended as follows:

It is the opinion of DMV, based on the language contained in Va. Code § 46.2-328.1(C), that the new legal presence requirement must apply to applicants whose driver's licenses have expired or been revoked, suspended or cancelled prior to January 1, 2004 and application is made for reissuance after January 1, 2004. The agency would not find it appropriate to interpret the new statute in any other manner unless so advised by the Attorney General's Office and the Office of the Governor. Accordingly, in order to conserve funds and ensure the most effective use of agency funds, it is recommended that the means utilized to notify affected applicants be through public information campaigns, and

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individualized verbal and mailed notices to applicants during or as a result of compliance actions.

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Members approved the development of two separate action/issue statements with the changes shown above, to be presented to the panel at the next meeting. They requested more information be included to help explain the issues and ramifications of the recommended actions and that any recommendations related to license status specifically state that it must include review by the Attorney General's Office. They also requested that the documents be delivered prior to the meeting for review. The chairman agreed that these documents will be reviewed by the Attorney General's Office and the Governor's legal counsel.

► **POL-1: Implementation of the SAVE program — Approved with additional changes.**

Members had requested changes to this recommendation when it was discussed in the last panel meeting on June 18, 2003. Members requested additional changes in the Impact and Challenges statement. The fifth paragraph had been previously revised as follows:

There are concerns that information maintained on the system is often backlogged and not up-to-date. Phillip Vasquez reported that John Hager (Assistant to the Governor for Commonwealth Preparedness) has stated that he believes the U.S. Bureau of Citizenship and Immigration Services (BCIS) will become more efficient but that at this time, the SAVE system is not reliable.

Mr. Hager indicated that this statement had been made over 6 months ago and the information may not be relevant to today's system status. He wants the statement to be revised to reflect that he has no information on the current status of the SAVE system and that BCIS could have made progress in the intervening period to update the system. With this request, the paragraph could be amended as follows:

There are concerns that information maintained on the system is often backlogged and not up-to-date. While Phillip Vasquez reported that John Hager (Assistant to the Governor for Commonwealth Preparedness) has stated that he believes the U.S. Bureau of Citizenship and Immigration Services (BCIS) will become more efficient but that at this time, the SAVE system is not reliable, Mr Hager reports that he made the statement over 6 months ago and he has no current information on the readiness of the system.

In addition, members requested that the Panel Recommended Decision be amended to reflect the full and complete changes requested in the meeting of 6/18/03, as follows:

DMV recommends forgoing implementation use of the SAVE program at this time given that it is not proven reliable, at least until HB 1954 and SB 1058 have been implemented. This will assure that sufficient funds and manhours are available to successfully implement the legislation. Once the legislation is enacted and staff has been trained, and the system has been proven reliable, then DMV would revisit the issue of SAVE implementation.

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Members approved the recommendation, contingent on the requested changes.

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► **POL-2: Designated offices or windows for processing transactions requiring proof of legal presence — Approved.**

Members had requested changes to this recommendation when it was discussed in the last panel meeting on June 18, 2003. Members accepted and unanimously approved the revised action/issue statement.

► **POL-7: Accepting notification from local, state and federal government agencies that a document holder is not lawfully in the U.S. — Approved with additional change.**

Members had requested changes to this recommendation when it was discussed in the last panel meeting on June 18, 2003. Members requested an additional change in the third paragraph of the Panel Recommended Decision, as follows:

All notification advising DMV that an individual is not lawfully present in the U.S. will be verified by letter with the Bureau of Citizenship and Immigration Services before DMV takes any action.

Members approved the recommendation, contingent on the requested changes.

► **POL-4: Designation of temporary documents tied to legal presence.**

This action/issue statement was narrowly approved in the panel meeting of June 18, 2003, and the panel requested that it be conveyed to the Secretary of Transportation, the Attorney General's Office and the Office of the Governor, requesting advice. The chairman handed out copies of this recommendation with the transmittal letter to the Secretary of Transportation.

► **Outreach Plan.**

Staff presented the plan being used to convey legal presence information to the public. The effort includes explanations of HB 1954 and SB 1068 and what impact this legislation will have. Emphasis is being placed on an equitable and fair implementation of the new laws. Information is also being included that explains the purpose of the Legal Presence Panel and how it operates. Public meetings have already been held in Falls Church, Arlington and Virginia Beach. Every effort is being made to hold meetings in the geographical areas represented by the panel members, and panel members are invited to attend. Future meetings will be held evenings in DMV CSC locations in Woodbridge, Manassas, Richmond headquarters, Harrisonburg, Winchester, Roanoke, and Hampton-Hilltop.

Staff reported attendance to date is satisfactory and that they have been able to take advantage of local interest and community groups for advertisements and attendees recruitment. Feedback to date includes concerns expressed about:



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- Use of the DMV 141 form (staff explained that this was a separate issue unrelated to implementation of legislation).

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- Stepped-up enforcement of illegal sales of driver's licenses and ID cards.
- Basic perceived inequalities inherent in the legislation.
- Disparate or unequal treatment.
- Documents issued by the U.S Department of State or foreign embassies that apply to high-level professionals, but not to their spouses or children.
- SSN verification and problems with translations, especially of Arabic documents.
- Use and acceptability of NATO documents issued to foreign military in the U.S. for training or other such purposes.
- Training and discipline measures for DMV employees to ensure fair and equitable treatment.
- The perceived inability of DMV to implement this legislation fairly and equitably.

Staff also reported receiving suggestions that training be provided by a university international advisory group, and that DMV develop a drop-off, pick-up reservation process for proof of legal presence.

The chairman reported that DMV is also working with other state agencies such as Vital Records and the State Board of Elections, and that this effort is on-going. Members expressed concerns about how feedback of this nature is going to be integrated into panel operations, and whether such feedback will necessitate re-visiting recommendations already made. They also stressed the importance of getting full public input and encouraging more publicity for such public meetings. Concerns were also expressed that all efforts be made to publicize the meetings in languages appropriate to their audiences. The chairman stated that recommendations already made may need to be re-visited and tweaked in light of some feedback, and reiterated that all decisions will still be presented to the Secretary and the Governor. Finally, members requested that additional meetings be set for Southside, in the Patrick, Lawrenceville and South Boston area where there are populations that will be affected by this legislation. They also recommended that DMV hold a meeting on the Eastern Shore.

#### ► **Virginia Department of Transportation (VDOT) process for public meetings.**

Staff was requested in the meeting of June 18<sup>th</sup> to gather information on the process VDOT uses for its public meetings. Staff reported that VDOT uses three basic types of processes: traditional (formal), open, or a combination of the two. The traditional or formal process features persons signing up to speak and speaking one at a time to a panel or other such group.

The open format features booths or stations that pertain to specific subjects of interest — for example, in Legal Presence, this could encompass subjects such as criteria for licensing, documents, and the licensing process.

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Each station is manned by a court reporter in addition to a VDOT employee who is expert in the topic. Handouts and other written material are available. Persons attending such meetings sign up on a master list that can be used for future mailings to interested parties. Persons who wish may leave written comments, or may relate their comments orally to the court reporter in the

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appropriate station. This open format allows interested persons to review information and provide comments, but does not incorporate speeches to a panel, as under the formal format. In some cases, VDOT prepares a video or PowerPoint presentation that can be used at the beginning of the meeting.

#### ► **Legal presence documents accepted in other states.**

In the June 18, 2003, meeting, the panel had asked for information about what legal presence documents are accepted in other states. Staff presented findings that show states that have a legal presence requirement vary in what they will accept as proof of legal presence. Each state has differing approaches to legal presence, and different statutory requirements. This makes comparison between states difficult. Staff is in the process of developing the list of comments that will be used as acceptable forms of proof in Virginia.

#### ► **Information and public contact methods for disseminating legal presence requirements and related information.**

In the June 18, 2003, meeting, the panel had asked for information on the possibility of providing toll-free numbers and web addresses for the public to provide comments on implementation of the legal presence legislation.

Staff reported that costs to implement and transcribe comments made to a bilingual toll-free number would vary according to the volume of calls and the options designed into the process. The highest costs associated with such a service would be in the transcription and translation of comments into English from another language. LLE Language Services estimates that there would be a minimum charge of \$2.50 each time the line for a foreign language is checked, a transcription fee (for Spanish in this example) of \$1.85 per minute per voice mail retrieved, and a translation fee of \$0.20 per word.

These costs were used to estimate a potential cost per month of \$77,560, based on 1,000 three-minute calls a month with LLE checking voice mails once a week. One 360-word call would incur a \$5.55 transcription cost and a \$72.00 translation cost, for a total of \$77.55 total cost per call. 1,000 such calls would incur total transcription and translation charges of \$77,550. Checking the voice mail once a week for a month would incur another fee of \$10. Staff stressed that these are estimated costs and there is no reliable method by which more definitive data can be obtained.

Staff also reported that the connection for comments via e-mail from the DMV website is being developed, along with a version in Spanish that also will provide specific information relating to documentation. Currently, DMV has staffing sufficient to provide a timely response to e-mail inquiries and comments. One employee can answer approximately 100 e-mail messages a week; this will be monitored to see if staffing needs to be increased. At this time, DMV anticipated using volunteer bilingual employees to provide translation services.

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Members expressed the need for more public forums, especially in the Northern Virginia area around Manassas and Woodbridge. Members also stated that they want to review any further communications plans.

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► **Future panel business and meetings.**

The chairman stated that although much has been accomplished and significant issues have been addressed, there is still a need for more panel meetings in the future. He indicated that in the next few days, staff will be contacting panel members for scheduling information covering the next several months. Some members expressed concerns about another day-long meeting, and the chairman agreed that some meetings could be shorter. Members agreed that it is important to continue receiving public comments and integrating them into the decision-making process.

The meeting convened at 10:00 a.m. and adjourned at 4:15 p.m.

**ATTENDEES**

**Panel Attendees:** D. B. Smit, Rob Martinez, John Hager, Lynette Coughlin, Helen Konrad, Walter Tejada, David Neumeyer, Robert Crouch, Ricardo Castaneda, and Ralph Davis.

**Others in Attendance:** Richard B. Campbell, Jeffrey A. Spencer and Richard L. Walton, Jr. (Virginia Office of the Attorney General); Claire Guthrie Castañaga (CG2 Consulting); Amy Perron (ACLU); Juan Lizama (Richmond-Times Dispatch); Barbara Klotz, Philip Vasquez, Karen Grim, Karen Chappell, Anne Atkins, Maxine Carter, and Jo Anne Maxwell (Department of Motor Vehicles).

**Notetaker:** Michie Longley